

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No.331-SB of 1994

Date of Decision: March 13, 2007

Mohan Lal and another

...Appellants

VERSUS

The State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Bipan Ghai, Advocate,
for the appellants.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

RANJIT SINGH, J.

Upon being convicted for an offence under Section 304-B IPC and sentenced to suffer ten and seven years rigorous imprisonment, respectively, appellants Mohan Lal and his mother Somti Devi are in appeal before this court. Appellants and Sat Pal (since acquitted) were tried on allegations made by Ranbir Singh son of Duni Chand, brother of deceased Darshna, wife of Mohan Lal, appellant No.1. Mohan Lal married Darshna about two years prior to

the incident dated 31.7.1992. FIR reveals that dowry according to the capability of the deceased-wife's family was statedly given. However, it is disclosed that appellant Mohan Lal started harassing his wife Darshna. As per allegations, appellant Mohan Lal had asked his wife to bring scooter in case she was interested to live with him. Darshna used to talk about her harassment whenever she would go to her parental house at Moga. A male child was born to Darshna about seven months prior to the incident, but her husband Mohan Lal appellant did not even come to see the child. It is alleged that demand of scooter was conveyed through messages for rehabilitating Darshna. The complainant, being poor person, was not in a position to meet the demand. A panchayat was convened on 26.7.1992 and Darshna was sent to Rajpura at the intervention of panchayat. On 30.7.1992, complainant Ranbir Singh received a telephonic message from one Kesar Singh of Rajpura that his sister Darshna had been admitted in Rajendra Hospital, Patiala due to burn injuries. On reaching Patiala, complainant, while being accompanied by his brother Mohan Lal, learnt that his sister Darshna was dead. He accordingly lodged a complaint that his sister Darshna was killed by appellant Mohan Lal, his brother Satpal and mother Somti Devi for bringing less dowry. Trial under Section 304-B IPC followed.

The prosecution examined eight witnesses, which included three doctors and the complainant besides some independent witnesses. Upon close of the prosecution case, the circumstances appearing against the appellants were put to them under Section 313 Cr.P.C. and their statements recorded. The appellants admitted the marriage, but denied having raised any

demand for dowry or for causing harassment or cruelty to Darshna for bringing less dowry. It was further pleaded on behalf of the appellants that Darshna was living happily with the appellants in her matrimonial house and was never ill-treated. Explaining the cause of her death, it was disclosed that Darshna caught fire accidentally when she was boiling milk on kerosene stove. The appellants further pointed out that they were not present in the house at the time of incident and Piara Lal brother of appellant Mohan Lal and his wife Ninder Kaur had removed Darshna first to hospital at Rajpura from where she was shifted to Rajendra Hospital, Patiala by appellant Mohan Lal. It is accordingly submitted that appellants took effective steps to save the life of Darshna by removing her to the hospital and this would be indicative of their innocence.

I have heard the counsel for the parties.

Mr.Bipan Ghai, the counsel appearing for the appellants has referred to the statements of complainant Ranbir Singh and other witnesses to urge that the demand of scooter or dowry is not sufficiently established. The only evidence in this regard, as per the counsel, would be that of Ranbir Singh complainant, who has given only hear-say evidence in this regard and as such the allegation of the demand of dowry is not made out. On the other hand, Mr.M.C.Berry, Senior Deputy Advocate General, Punjab appearing for the State would heavily rely on letter dated 12.6.1991, Exh.PW-6/1 written by deceased Darshna to say that the demand of dowry and harassment is clearly established from the said letter. He would also refer to the evidence of PW-6 Ranbir Singh complainant and other witnesses to say that the case of the prosecution stood fully

proved.

In order to succeed, the prosecution has basically relied on the version of PW-6 Ranbir Singh complainant. He produced a letter, Exh.PW6/1 written by late Darshna on 12.6.1991 before the Court. The counsel for the appellants would raise serious objection for the court to rely on this letter, which is never produced during the course of investigation, but was introduced in the evidence for the first time before the court while PW-6 appeared as a witness. He, as such, contends that it would not be safe to rely on this piece of evidence, which was introduced in this case in a manner taking the defence by surprise. This, says the counsel, may indicate the possibility of the letter being a created evidence. Since the prosecution has mainly based its case to indicate demand of dowry on Exh.PW6/1 and the version as given by PW-6, this evidence would call for minute scrutiny.

It is not disputed by the parties that Darshna died an unnatural death within seven years of marriage. The parties, however, are at variance as regard to the mode of death. The prosecution would urge that deceased Darshna died on account of harassment and demand of dowry and hence pleads for conviction of appellants under Section 304-B IPC. The appellants, however, would say that it is a case of accidental fire leading to the death of deceased Darshna and that there was no demand of dowry on their part. It is also their case that the prosecution was not able to establish the demand of dowry. The only piece of evidence relied in this regard is Exh.PW6/1 and it would be un-safe to place any reliance thereon.

Ranbir Singh (PW-6), deposed that Mohan Lal appellant and his mother Somti Devi started beating Darshna sometime after the marriage. PW-6 has also stated that they started harassing Darshna and were demanding scooter. This witness has also brought out that the appellants demanded articles like fridge etc. After saying so, he made a mention to the letter written by Darshna regarding her ill-treatment. Despite objection by the defence, this letter was exhibited as Exh.PW6/1, which according to PW-6, was in the handwriting of Darshna. PW-6 also brought out that this letter was received by post through one Karyana shop at Moga. PW-6 also testified that the family had taken Darshna to Moga after 4-5 months where she stayed for 10-11 months continuously and that thereafter appellant Mohan Lal and his father alongwith 8-9 persons had come to Moga and had taken his sister assuring that she will not be harassed. Deceased Darshna was so sent on 26.7.1992. As per this witness, he on 30.7.1992 received a phone call from one Kesar Singh that his sister Darshna had received burn injuries and on reaching Patiala at about 11.00 P.M., he learnt about death of his sister Darshna. While under cross-examination, the witness stated that Mohan Lal appellant was working in a Private Ghee Mill and was earning Rs.800-900/- per month. Talking about himself, the witness stated that he was earning Rs.100-150/- per day being a fruit seller plying rehri for selling fruits. He otherwise conceded that at the time of settling the marriage, no talk about the amount to be spent on marriage or articles to be given took place. As per PW-6, about 20 persons had constituted the marriage party. On being questioned, the witness stated that a sum of Rs.60,000/- was spent on marriage.

On further questioning, the witness deposed that the amount was withdrawn from the Bank account of his mother and some amount was borrowed from the relatives. He had to concede that his mother did not have any source of income and was dependent upon him. He could not give the details of the list of articles given at the time of marriage. He further conceded that no demand was raised for dowry or any article at the time of marriage. He could not produce any bill or receipt regarding purchase of articles given in dowry. In this regard, only a list was given that too after about 1-1/2 months of death of Darshna. As per PW-6, Darshna Rani and Mohan Lal appellant had come to Moga 2/3 times and had stayed with them and that they always came and returned happily. It is hereafter that PW-6 has introduced the demand of dowry and harassment on the basis of a hear-say evidence by disclosing that he was so told by his wife. His version in this regard is “ However, Darshna Rani had told my wife that she was being harassed for having not brought the dowry articles. She had told my wife that according to her in-laws, people were offering Motor-cycle etc. and we have not given even a cycle to them. This was told by her to my wife.” It is, thus, clear that PW-6 has given a derivative evidence regarding demand of dowry having learnt about it from his wife. He, as such, did not have any direct knowledge about demand of dowry. This piece of evidence is a clear hear-say evidence. As per Section 60 of the Indian Evidence Act, 1872, oral evidence must, in all cases whatever, be direct. This section further says that if oral evidence refers to a fact which could be heard, it must be the evidence of a witness, who says he heard it. Whatever was stated by PW-6 in regard to demand of dowry, as having been

disclosed by deceased Darshna to his wife, was heard by his wife and not by this witness. Thus, it was the evidence which he had not heard himself, but learnt from his wife. Such hear-say evidence is not admissible evidence. Wife of PW-6, who is source of this information to him, was never examined by the prosecution. This piece of evidence may not be hear-say as to PW-6 being so told by his wife, but would be a hear-say evidence as regard to the truthfulness of the facts so stated by his wife to the witness. In order to validly rely on this evidence, the prosecution was required to produce wife of PW-6 as a witness and in her absence this is not legal evidence to be taken into consideration. Now this derivative version of the wife of PW-6 is on record and is pressed into service by prosecution without giving any opportunity to the defence to test the veracity of such statement made by the deceased to the wife of PW-6. Even PW-6 admitted while under cross-examination that he did not disclose this fact to the police. Something which he did not disclose during investigation and was introduced for the first time before the court would not inspire confidence for implicit reliance to base conviction. Similar is the state in regard to letter, Exh.PW6/1. This letter was also introduced for the first time by this witness while deposing before the court. Why and under what circumstances, this letter was not produced before the police, is also not explained. Investigating Officer when questioned in this regard clearly stated that this letter was never produced by PW-6 before him. PW-6 was otherwise also confronted with his previous statement, Exh.PW6/2 where demand of fridge was not mentioned by him, though he had made a mention about the demand of scooter. He had also not mentioned anything about the receipt of letter from

Darshna in his previous statement. PW-6 also conceded that he did not hear the telephone call from Patiala. When confronted, he was found to have stated that Kesar Singh had phoned him from Rajpura. Noticing the conduct of PW-6 in making different statements at different times, it may not be safe to rely upon the hear-say evidence given by him regarding demand of dowry and it would also not be safe to place implicit reliance on the contents of letter, Exh.PW6/1. If this letter in fact was in existence, PW-6 was bound to produce the same before the police during investigation or to make mention about the said letter before the police. These facts, when viewed in the background that there is no one to give an eye-witness account of the incident, the evidence of PW-6 would require minute scrutiny with great care and caution.

Harjit Kaur (PW-4) was produced by the prosecution being a neighbour of appellant Mohan Lal. She was the one, who had rushed to the house of the appellants after hearing the shouts and raising of the alarm on the day of incident. PW-4 has clearly brought out that Mohan Lal was not present in the house at that time. This witness had put a gunny bag on the burning lady to control the fire. As per this witness, appellants Mohan Lal, Somwati and also Lalli were not present at the time of incident and had come after about 10-15 minutes from the fields. On request by Public Prosecutor, this witness was got declared hostile and subjected to cross-examination. When confronted with the portions of her previous statement, the witness denied having made the same. While being cross-examined by the defence counsel, PW-4 brought out that deceased Darshna was taken to hospital by Piara Lal,

Somwati and Mohinder Kaur. This witness had also accompanied them to the hospital. She had been living in the neighbourhood of the appellants for about 25 years and was on visiting terms with them. PW-4 deposed that there was no demand of dowry and that the family of appellant Mohan Lal had never harassed deceased Darshna. PW-4 also pointed out that she was visiting the house of the appellants on daily basis as she used to purchase milk from them. She (PW-4) then very significantly stated that the deceased Darshna told her that she caught fire accidentally while boiling milk over kerosene stove. Her version in this regard is:-

“However, she told us that she caught fire while she was boiling the milk over kerosene stove.”

PW-4 also confined that appellant Mohan Lal and Darshna deceased had cordial relations as husband and wife and were having a son and that they were leading a happy and normal married life. This evidence, given by independent and neutral witness produced by prosecution, could not be attributed with any motive and stood in support of the stand of defence and went on to cast serious doubt on the prosecution case.

It can be seen that allegations of demand of dowry are basically sought to be supported from the contents of letter, Exh.PW6/1. To counter this, the defence has referred to two other letters written by deceased Darshna and her sister Babli, which were marked as A and B. These letters were not exhibited on the ground that the handwriting thereon could not be proved. Though PW-6 while producing letter, Exh.PW6/1, identified the same to be in the handwriting of deceased Darshna, but he showed his inability to

identify handwritings on letters marked A and B. The trial court, while placing reliance on letter Exh.PW6/1, observed that handwriting therein was same as that contained in two letters produced by appellant Mohan Lal addressed to him by Darshna. The question may also arise whether a marked letter, which is not proved in evidence, can be taken into consideration by the court for comparison with the letter exhibited but still not taken into consideration for defence purposes. If these marked letters were taken into consideration to compare the handwriting on the exhibited letters, then it may become difficult to discard these letters from consideration for other purposes. Either the act of taking into consideration the marked letters to observe that the handwriting on Exh.PW6/1 was that of deceased Darshna cannot be approved or if it is to be done, then these letters cannot be discarded from consideration for other purposes as required by the defence. Proper legal course would be that the letters not proved and kept as mark A and B only, are not taken into consideration for any purpose whatsoever including to establish handwriting on the said letters or the one which was exhibited. Though the court may have power to compare signatures, writing or seal with the other admitted or proved writing, yet while doing so the court does not play the role of an expert but to satisfy itself on its own observation that it is safe to act on such evidence. Evidence of hand writing expert is generally considered weak and fallible and it can be equally true of observation of the court, while comparing the disputed writing with the admitted one. The discussion , afore-mentioned, would indicate that there is either no legal evidence to prove the demand of dowry or

such evidence, which is put into service by the prosecution, would not be sufficient for placing reliance to say that the prosecution was able to establish the demand of dowry on the part of the appellants. Mr.Ghai, is justified in saying that even if version was to be accepted, the demand was by the husband and could not be linked to Somti Devi, appellant No.2, who is by now about 84 years. The prosecution has also not been able to sufficiently establish that this was a case of suicidal death. The evidence on record would show that the deceased had caught fire accidentally while boiling milk. This evidence can even be termed an oral dying declaration of the deceased, which came on record through prosecution witness. In any case, this would go to cast a serious doubt on the prosecution story of suicide specially so when there is no one to give evidence that it was a suicidal death.

Taking all these factors into consideration, it can be said that the prosecution failed to prove the charge against the appellants beyond reasonable doubt, the benefit of which is to be given to the appellants. The appeal is allowed. The conviction and sentence of the appellants is set aside. The bail bonds and surety bonds, if any, furnished by the appellants shall stand discharged.

March 13, 2007
ramesh

(RANJIT SINGH)
JUDGE

